

Bill No. 14 of 1967

PUBLISHED 29TH JULY, 1967.

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OMBUDSMAN BILL, 1967.

Arrangement of Sections.

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SCHEDULE.

A BILL

Intituled

AN ACT to make provision for matters supplementary and ancillary to those provided for by part 2 of Chapter V of the Constitution of Guyana.

Enacted by the Parliament of Guyana :—

1. This Act may be cited as the Ombudsman Act, 1967.

A.D. 1967.

Short title.

2. (1) All complaints to the Ombudsman and requests for investigation by him shall be made in writing.

Mode of complaint.

(2) Notwithstanding anything provided by or under any enactment, where any letter written by any person detained on a charge or after conviction of any offence is addressed to the Ombudsman, it shall be immediately forwarded, unopened, to the Ombudsman by the person for the time being in charge of the place where the writer is detained.

3. (1) Where the Ombudsman proposes to conduct an investigation under article 53(1) of the Constitution of Guyana (hereinafter referred to as "the Constitution") he shall afford to the principal officer of the department or authority concerned an opportunity to make, orally or in writing as the Ombudsman thinks fit, representations which are relevant to the matter in question and the Ombudsman shall not, as a result of such an investigation, make any report or recommendation which may adversely affect any person without his having had an opportunity to make, orally or in writing as deemed sufficient by the Ombudsman, representations relevant to the matter investigated.

Procedure in respect of investigation.

(2) Every such investigation shall be conducted in private.

(3) It shall not be necessary for the Ombudsman to hold any hearing and, subject as hereinbefore provided, no person shall be entitled as of right to be heard by the Ombudsman. The Ombudsman may obtain information from such persons and in such manner, and make such inquiries, as he thinks fit.

(4) If, during or after any investigation, the Ombudsman is of opinion that there is evidence of any breach of duty, misconduct or criminal offence on the part of any officer or employee of any department or authority to which article 53 of the Constitution applies, the Ombudsman may refer the matter to the authority competent to take such disciplinary or other proceedings against him as may be appropriate.

(5) Subject to the provisions of this Act, the Ombudsman may regulate his procedure in such manner as he considers appropriate in the circumstances of the case.

Cap. 11. (6) Where any person is required under this Act by the Ombudsman to attend before him for the purposes of an investigation, the Ombudsman shall cause to be paid to such person, out of moneys provided by Parliament for the purpose, the fees, allowances and expenses, subject to qualifications and exception corresponding to those, that are for the time being prescribed in the sixth schedule to the Criminal Law (Procedure) Ordinance, so, however, that the like functions as are so prescribed and assigned to the Registrar of the Supreme Court of Judicature shall, for the purposes of this subsection, be exercisable by the Ombudsman and he may, if he thinks fit, disallow, in whole or in part, the payment of any amount under this subsection.

Evidence.

4. (1) Subject to the provisions of this section and of section 5 of this Act, the Ombudsman may from time to time require any person who in his opinion is able to give any information relating to any matter that is being investigated by the Ombudsman to furnish to him any such information, and to produce any documents or papers or things which in the Ombudsman's opinion relate to any such matter as aforesaid and which may be in the possession or under the control of that person. This subsection shall apply whether or not the person is an officer, employee, or member of any department or authority, and whether or not such documents, papers, or things are in the custody or under the control of any department or authority.

(2) The Ombudsman may summon before him and examine on oath

- (a) any person who is an officer or employee or member of any department or authority to which article 53 of the Constitution applies and who in the Ombudsman's opinion is able to give any such information as aforesaid; or
- (b) any complainant; or
- (c) any other person who in the Ombudsman's opinion is able to give any such information —

Cap. 10. and for that purpose may administer an oath. Every such examination by the Ombudsman shall be deemed to be a judicial proceeding for the purposes of Title 21 of the Criminal Law (Offences) Ordinance (which relates to perjury).

(3) Subject to the provisions of subsection (4) of this section, no person who is bound by the provisions of any enactment, other than the Official Secrets Acts, 1911 to 1939 (or any Act of the Parliament of Guyana replacing the same in its application to Guyana), to maintain secrecy in relation to, or not to disclose, any matter shall be required to supply any information to or answer any questions put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or paper or thing relating to it, if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure.

(4) With the previous consent in writing of any complainant, any person to whom subsection (3) of this section applies may be required by the Ombudsman to supply any information or answer any question or produce any document or paper or thing relating only to the complainant, and it shall be the duty of the person to comply with that requirement.

(5) Subject to the provisions of subsection (4) of this section, every person shall have the like privileges in relation to the giving of information, the answering of questions, and the production of documents and papers and things, as witnesses have in any court.

Cap. 10. (6) Except on the trial of any person for an offence under Title 21 of the Criminal Law (Offences) Ordinance in respect of his sworn testimony, or for an offence under section 12 of this Act, no statement made or answer given by that or any other person in the course of any inquiry by, or any proceedings before, the Ombudsman under the Constitution or this Act shall be admissible in evidence against any person in any court or at any inquiry or in any other pro-

ceedings and no evidence in respect of proceedings before the Ombudsman shall be given against any person.

(7) No person shall be liable to prosecution for an offence against the Official Secrets Acts, 1911 to 1939, or any enactment, other than this Act, by reason of his compliance with any requirement of the Ombudsman under this section.

5. (1) Where the Attorney General certifies that the giving of any information or the answering of any question or the production of any document or paper or thing —

Disclosure of certain matters not to be required.

- (a) might prejudice the security, defence or international relations of Guyana (including Guyana's relations with the Government of any other country or with any international organisation);
- (b) might involve the disclosure of the deliberations of Cabinet; or
- (c) might involve the disclosure of proceedings of Cabinet, or of any Committee of Cabinet, relating to matters of a secret or confidential nature, and would be injurious to the public interest,

the Ombudsman shall not require the information or answer to be given or, as the case may be, the document or paper or thing to be produced.

(2) Subject to the provisions of subsection (1) of this section, no rule of law which authorises or requires the withholding of any document or paper, or the refusal to answer any question, on the ground that the disclosure of the document or paper or the answering of the question would be injurious to the public interest shall apply in respect of any investigation by or proceedings before the Ombudsman.

6. A person who performs the functions appertaining to the office of the Ombudsman or any office or employment thereunder —

Secrecy of information.

- (a) shall regard as secret and confidential all documents, information and things which have been disclosed to any such person in the execution of any of the provisions of articles 53 and 54 of the Constitution:

Provided that no disclosure made by any such person in proceedings for an offence under section 12 of this Act, or under Title 21 of the Criminal Law (Offences) Ordinance and by virtue of subsection (2) of section 4 of this Act, or which the Ombudsman considers it requisite to make in the discharge of any of his functions and for the purpose of executing any of the said provisions or of subsection (4) of section 3 or section 11 of this Act, shall be deemed inconsistent with any duty imposed by this paragraph; and

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- (b) shall not be called upon to give evidence in respect of, or produce, any such documents, information or things in any proceedings, other than proceedings mentioned in the preceding proviso.

7. No proceeding of the Ombudsman shall be held bad for want of form, and, except on the ground of lack of jurisdiction, no proceeding or decision of the Ombudsman shall be liable to be challenged, reviewed, quashed, or called in question in any court.

Proceedings not to be questioned or to be subject to review.

8. (1) Except in the case of proceedings for an offence under paragraph (d) of section 12 of this Act, no proceedings, civil or criminal, shall lie against any person appointed to any office, or to perform any functions, referred to in section 6 of this Act for anything he may do or report or say in the course of the exercise or intended exercise of his functions under the Constitution or this Act, unless it be shown that he acted in bad faith.

Proceedings privileged.

(2) Anything said or any information supplied or any document, paper or thing produced by any person for the purpose or in the course of any inquiry by or proceedings before the Ombudsman under the Constitution or this Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

Power of entry on premises.

9. (1) The Ombudsman may, for the purpose of executing any provisions of article 53 of the Constitution but subject to the provisions of this section, at any time enter upon any premises occupied by any department or authority to which the said article applies and inspect the premises and, subject to the provisions of sections 4 and 5 of this Act, carry out therein any inquiry or investigation that is within his jurisdiction for the said purpose.

(2) Before entering upon any such premises the Ombudsman shall notify the principal officer of the department or as the case may require the authority by which the premises are occupied.

(3) The Attorney General may from time to time by notice to the Ombudsman exclude from the application of subsection (1) of this section any specified premises or class of premises, if he is satisfied that the exercise of the power conferred by this section might prejudice the security, defence or international relations of Guyana (including Guyana's relations with the Government of any other country or with any international organisation).

Delegation of powers.

10. (1) With the prior approval in each case of the Prime Minister, functions hereinbefore assigned to the Ombudsman may from time to time, by direction under his hand, be delegated to any person who is appointed as mentioned in subsection (1) of section 8 of this Act.

(2) No such delegation shall prevent the exercise of any power by the Ombudsman.

(3) Any such delegation may be made subject to such restrictions and conditions as the Ombudsman may direct, and may be made either generally or in relation to any particular case or class of cases.

(4) Any person purporting to perform any function of the Ombudsman by virtue of a delegation under this section shall, when required to do so, produce evidence of his authority to exercise the power.

Reports.

11. The Ombudsman may from time to time in the public interest publish reports relating generally to the exercise of his functions or to a particular case or cases investigated by him, whether or not the matters to be dealt with in such reports may have been the subject of a report to the Assembly.

12. Every person who —

- (a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Ombudsman or any other person in the exercise of his powers under this Act;
- (b) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Act;
- (c) wilfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise of his powers under this Act; or
- (d) in a manner inconsistent with his duty under paragraph (a) of section 6 of this Act, deals with any documents, information or things mentioned in that paragraph,

shall be guilty of an offence against this Act, and shall be liable on summary conviction to a fine not exceeding five hundred dollars, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

Prescription of authorities subject to the Ombudsman's jurisdiction.

13. (1) The authorities mentioned in the schedule to this Act are authorities to which article 53 of the Constitution shall apply.

(2) The Governor-General may, by order, amend the said schedule by the addition thereto or deletion therefrom of any authorities or the substitution therein, for any authorities, of other authorities.

Central Board of Health

Central Housing and Planning Authority

Sea Defence Board

Drainage and Irrigation Board.

EXPLANATORY MEMORANDUM

The Constitution of Guyana, which established the office of Ombudsman for the investigation of faults in the administration of Government departments, tender boards and other authorities prescribed by Parliament, empowers Parliament to provide for matters supplementary and ancillary to the above.

2. Accordingly, this Bill seeks to —

- (a) make procedural provisions in respect of complaints to the Ombudsman and investigations by him, including requirements that letters to the Ombudsman from persons in custody be forwarded to him unopened and that opportunity to comment be afforded to departments and authorities in cases of complaints concerning them and to such persons as may be affected by his adverse reports;
- (b) authorise the Ombudsman to take evidence on oath, to require the giving of information and production of documents and to enter the premises of departments and authorities in cases of complaints concerning them and security, defence or international relations of Guyana, and of maintaining the secrecy of Cabinet proceedings, but not merely of the public interest;
- (c) confer such privileges in relation to the Ombudsman's proceedings as are analogous to those incidental to judicial proceedings;
- (d) provide for the maintenance of secrecy by the Ombudsman and his officers, subject to a power of disclosure for the purpose of performance of his functions;
- (e) penalise obstruction or misleading of the Ombudsman or his officers, failure to comply with their requirements, and breaches of secrecy by them; and
- (f) schedule the Central Board of Health, Central Housing and Planning Authority, Sea Defence Board and Drainage and Irrigation Board as authorities to be subject to the Ombudsman's investigatory jurisdiction, the list of schedule authorities being variable at the order of the Governor-General.

P. A. REID,
for Prime Minister.

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